



General Assembly

Amendment

January Session, 2009

LCO No. 5849

SB0076805849SR0

Offered by:

SEN. MCKINNEY, 28th Dist.

SEN. FASANO, 34th Dist.

SEN. RORABACK, 30th Dist.

To: Senate Bill No. 768

File No. 548

Cal. No. 384

"AN ACT CONCERNING THE PROTECTION OF WHISTLEBLOWERS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 4-61dd of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective July 1, 2009*):

5 (a) Any person having knowledge of any matter involving
6 corruption, unethical practices, violation of state laws or regulations,
7 mismanagement, gross waste of funds, abuse of authority or danger to
8 the public safety occurring in any state department or agency or any
9 quasi-public agency, as defined in section 1-120, or any person having
10 knowledge of any matter involving corruption, violation of state or
11 federal laws or regulations, gross waste of funds, abuse of authority or
12 danger to the public safety occurring in any large state contract, may
13 transmit all facts and information in such person's possession
14 concerning such matter to the Auditors of Public Accounts. The

15 Auditors of Public Accounts shall review such matter and [report their
16 findings and any recommendations to the Attorney General. Upon
17 receiving such a report, the Attorney General shall] make such
18 investigation as the [Attorney General deems] Auditors of Public
19 Accounts deem proper regarding such [report] matter and any other
20 information that may be reasonably derived from such [report] matter.
21 [Prior to conducting an investigation of any information that may be
22 reasonably derived from such report, the Attorney General shall
23 consult with the Auditors of Public Accounts concerning the
24 relationship of such additional information to the report that has been
25 issued pursuant to this subsection. Any such subsequent investigation
26 deemed appropriate by the Attorney General shall only be conducted
27 with the concurrence and assistance of the Auditors of Public
28 Accounts. At the request of the Attorney General or on their own
29 initiative, the auditors shall assist in the investigation.] The [Attorney
30 General] Auditors of Public Accounts shall have power to summon
31 witnesses, require the production of any necessary books, papers or
32 other documents and administer oaths to witnesses, where necessary,
33 for the purpose of an investigation pursuant to this section. Upon the
34 conclusion of the investigation, the [Attorney General] Auditors of
35 Public Accounts shall where necessary, report any findings to the
36 Governor, or in matters involving criminal activity, to the Chief State's
37 Attorney. In addition to the exempt records provision of section 1-210,
38 the Auditors of Public Accounts [and the Attorney General] shall not,
39 after receipt of any information from a person under the provisions of
40 this section, disclose the identity of such person without such person's
41 consent unless the Auditors of Public Accounts [or the Attorney
42 General] determines that such disclosure is unavoidable, and may
43 withhold records of such investigation, during the pendency of the
44 investigation.

45 (b) The Auditors of Public Accounts may make application to a
46 panel of three Superior Court Judges, appointed by the Chief Court
47 Administrator, for the issuance of a subpoena whenever such
48 subpoena is necessary in order to obtain information which is not

49 otherwise available and which is needed in the performance of the
50 Auditors of Public Accounts' duties. Any person aggrieved by the
51 issuance of a subpoena by the Auditors of Public Accounts may
52 petition the Superior Court for relief.

53 [(b)] (c) (1) No state officer or employee, as defined in section 4-141,
54 no quasi-public agency officer or employee, no officer or employee of a
55 large state contractor and no appointing authority shall take or
56 threaten to take any personnel action against any state or quasi-public
57 agency employee or any employee of a large state contractor in
58 retaliation for such employee's or contractor's disclosure of
59 information to (A) an employee of the Auditors of Public Accounts [or
60 the Attorney General] under the provisions of subsection (a) of this
61 section; (B) an employee of the state agency or quasi-public agency
62 where such state officer or employee is employed; (C) an employee of
63 a state agency pursuant to a mandated reporter statute; or (D) in the
64 case of a large state contractor, an employee of the large state
65 contractor or the contracting state agency concerning information
66 involving the large state contract.

67 (2) If a state or quasi-public agency employee or an employee of a
68 large state contractor alleges that a personnel action has been
69 threatened or taken in violation of subdivision (1) of this subsection,
70 the employee may notify the [Attorney General] Auditors of Public
71 Accounts, who shall investigate pursuant to subsection (a) of this
72 section. If the Auditors of Public Accounts determine that such
73 personnel action was in retaliation for such employee's or contractor's
74 disclosure of information pursuant to this section, the Auditors of
75 Public Accounts may issue such determination to the Chief Human
76 Rights Referee and the Attorney General shall discontinue any
77 representation of any state officer, employee or appointing authority,
78 as applicable, that the Auditors of Public Accounts determined
79 undertook such retaliatory action.

80 (3) (A) Not later than [thirty] ninety days after learning of the
81 specific incident giving rise to a claim that a personnel action has been

82 threatened or has occurred in violation of subdivision (1) of this
83 subsection, a state or quasi-public agency employee, an employee of a
84 large state contractor or the employee's attorney may file a complaint
85 against the state agency, the quasi-public agency, or the large state
86 contractor concerning such personnel action with the Chief Human
87 Rights Referee designated under section 46a-57. Such complaint may
88 be amended if an additional incident giving rise to a claim under this
89 subdivision occurs subsequent to the filing of the original complaint.
90 The Chief Human Rights Referee shall assign the complaint to a
91 human rights referee appointed under section 46a-57, who shall
92 conduct a hearing and issue a decision concerning whether the officer
93 or employee taking or threatening to take the personnel action violated
94 any provision of this section. If, during the pendency of the hearing,
95 the human rights referee has reasonable cause to believe that any
96 officer or employee has taken personnel action in violation of
97 subdivision (1) of this subsection, such referee may order temporary
98 equitable relief, including, but not limited to, an order reinstating the
99 person filing the complaint to the same position held before such
100 personnel action was taken. If, after the hearing, the human rights
101 referee finds [such] a violation, the referee may award the aggrieved
102 employee reinstatement to the employee's former position, back pay
103 and reestablishment of any employee benefits for which the employee
104 would otherwise have been eligible if such violation had not occurred,
105 reasonable attorneys' fees, and any other damages. The human rights
106 referee shall forward the decision finding such violation and award to
107 the head of the agency and the supervisor of the employee or officer
108 who violated subdivision (1) of this subsection who shall take
109 appropriate personnel action. For the purposes of this subsection, such
110 human rights referee shall act as an independent hearing officer. The
111 decision of a human rights referee under this subsection may be
112 appealed by any person who was a party at such hearing, in
113 accordance with the provisions of section 4-183.

114 (B) The Chief Human Rights Referee shall adopt regulations, in
115 accordance with the provisions of chapter 54, establishing the

116 procedure for filing complaints and noticing and conducting hearings
117 under subparagraph (A) of this subdivision.

118 (4) As an alternative to the provisions of subdivisions (2) and (3) of
119 this subsection: (A) A state or quasi-public agency employee who
120 alleges that a personnel action has been threatened or taken may file an
121 appeal not later than [thirty] ninety days after learning of the specific
122 incident giving rise to such claim with the Employees' Review Board
123 under section 5-202, or, in the case of a state or quasi-public agency
124 employee covered by a collective bargaining contract, in accordance
125 with the procedure provided by such contract; or (B) an employee of a
126 large state contractor alleging that such action has been threatened or
127 taken may, after exhausting all available administrative remedies,
128 bring a civil action in accordance with the provisions of subsection (c)
129 of section 31-51m.

130 (5) In any proceeding under subdivision (2), (3) or (4) of this
131 subsection concerning a personnel action taken or threatened against
132 any state or quasi-public agency employee or any employee of a large
133 state contractor, which personnel action occurs not later than [one
134 year] three years after the employee first transmits or discloses facts
135 and information concerning a matter under subsection (a) of this
136 section or subdivision (1) of this subsection to the Auditors of Public
137 Accounts [or the Attorney General] or an employee of the state agency,
138 quasi-public agency or large state contractor, as applicable, there shall
139 be a rebuttable presumption that the personnel action is in retaliation
140 for the action taken by the employee under subsection (a) of this
141 section or subdivision (1) of this subsection.

142 (6) If a state officer or employee, as defined in section 4-141, a quasi-
143 public agency officer or employee, an officer or employee of a large
144 state contractor or an appointing authority takes or threatens to take
145 any action to impede, fail to renew or cancel a contract between a state
146 agency and a large state contractor, or between a large state contractor
147 and its subcontractor, in retaliation for the disclosure of information
148 pursuant to subsection (a) of this section or subdivision (1) of this

149 subsection to any agency listed in subdivision (1) of this subsection,
150 such affected agency, contractor or subcontractor may, not later than
151 ninety days after learning of such action, threat or failure to renew,
152 bring a civil action in the superior court for the judicial district of
153 Hartford to recover damages, attorney's fees and costs.

154 [(c)] (d) Any employee of a state or quasi-public agency or large
155 state contractor, who is found to have knowingly and maliciously
156 made false charges under subsection (a) of this section, shall be subject
157 to disciplinary action by such employee's appointing authority up to
158 and including dismissal. In the case of a state or quasi-public agency
159 employee, such action shall be subject to appeal to the Employees'
160 Review Board in accordance with section 5-202, or in the case of state
161 or quasi-public agency employees included in collective bargaining
162 contracts, the procedure provided by such contracts.

163 [(d)] (e) On or before September first, annually, the Auditors of
164 Public Accounts shall submit to the clerk of each house of the General
165 Assembly a report indicating the number of matters for which facts
166 and information were transmitted to the auditors pursuant to this
167 section during the preceding state fiscal year and the disposition of
168 each such matter.

169 [(e)] (f) Each contract between a state or quasi-public agency and a
170 large state contractor shall provide that, if an officer, employee or
171 appointing authority of a large state contractor takes or threatens to
172 take any personnel action against any employee of the contractor in
173 retaliation for such employee's disclosure of information [to any
174 employee of the contracting state or quasi-public agency or the
175 Auditors of Public Accounts or the Attorney General under the
176 provisions of] pursuant to subdivision (1) of subsection (c) of this
177 section or subsection (a) of this section, the contractor shall be liable for
178 a civil penalty of not more than five thousand dollars for each offense,
179 up to a maximum of twenty per cent of the value of the contract. Each
180 violation shall be a separate and distinct offense and in the case of a
181 continuing violation each calendar day's continuance of the violation

182 shall be deemed to be a separate and distinct offense. The executive
183 head of the state or quasi-public agency may request the Attorney
184 General to bring a civil action in the superior court for the judicial
185 district of Hartford to seek imposition and recovery of such civil
186 penalty.

187 ~~[(f)]~~ (g) Each large state contractor shall post a notice of the
188 provisions of this section relating to large state contractors in a
189 conspicuous place which is readily available for viewing by the
190 employees of the contractor.

191 ~~[(g)]~~ (h) No person who, in good faith, discloses information [to the
192 Auditors of Public Accounts or the Attorney General] in accordance
193 with the provisions of this section shall be liable for any civil damages
194 resulting from such good faith disclosure.

195 (i) In accordance with the provisions of section 4-38d, all employees
196 of the office of the Attorney General who are employed in the
197 whistleblower division shall be transferred to the office of the Auditors
198 of Public Accounts not later than July 1, 2009.

199 ~~[(h)]~~ (j) As used in this section:

200 (1) "Large state contract" means a contract between an entity and a
201 state or quasi-public agency, having a value of five million dollars or
202 more; and

203 (2) "Large state contractor" means an entity that has entered into a
204 large state contract with a state or quasi-public agency.

205 Sec. 2. (NEW) (*Effective July 1, 2009*) (a) Not later than September 1,
206 2009, the Attorney General, within available appropriations, shall
207 submit to the chairs and ranking members of the joint standing
208 committees of the General Assembly having cognizance of matters
209 relating to labor and government administration, the Governor and the
210 Auditors of Public Accounts a report indicating the number of: (1)
211 Matters referred by the Auditors of Public Accounts to the Attorney

212 General, pursuant to section 4-61dd of the general statutes, as
213 amended by this act, during the last ten years, and (2) reports or
214 complaints received from any other person involving alleged
215 corruption, unethical practices, violation of state law or regulation,
216 mismanagement, gross waste of funds, abuse of authority or danger to
217 the public safety occurring in any state department, agency, quasi-
218 public agency or large state contract during the last ten years. For each
219 such matter, report or complaint, the Attorney General's report shall
220 indicate: (A) The general nature of the matter, report or complaint, (B)
221 the scope of any investigation undertaken in response to such matter,
222 report or complaint, (C) the findings of such investigation, and (D)
223 whether the findings were reported to the Governor, the Chief State's
224 Attorney or any other third party for further investigation or corrective
225 action.

226 (b) On or before September first of each year following the issuance
227 of the report described in subsection (a) of this section, the Attorney
228 General, within available appropriations, shall submit an annual
229 report updating the information provided in the report submitted
230 pursuant to subsection (a) of this section. Such annual report shall
231 provide an update of pending matters and contain the information
232 described in subsection (a) of this section for any new matters, reports
233 or complaints received by the Attorney General.

234 (c) Nothing in this section shall be deemed to require or authorize
235 the Attorney General to disclose the identity of any person that
236 provided information pursuant to section 4-61dd of the general
237 statutes, as amended by this act.

238 Sec. 3. (*Effective July 1, 2009*) Not later than February 1, 2010, the
239 Attorney General, within available appropriations, shall submit, in
240 accordance with the provisions of section 11-4a of the general statutes,
241 to the chairs and ranking members of the joint standing committees of
242 the General Assembly having cognizance of matters relating to labor
243 and government administration the office policy historically utilized
244 by the Attorney General to assure that information received by the

245 whistleblower division within the office of the Attorney General was
246 not shared with the applicable respondent state agency or the assistant
247 attorney general who represented the applicable respondent state
248 agency."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	4-61dd
Sec. 2	<i>July 1, 2009</i>	New section
Sec. 3	<i>July 1, 2009</i>	New section